IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BEN BAKER and CLARISSA GLENN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 C 8940
	)	
CITY OF CHICAGO, et al.,	)	Chicago, Illinois
	)	December 6, 2018
Defendants.	)	11:00 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SHEILA M. FINNEGAN, MAGISTRATE JUDGE

APPEARANCES:

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(Proceedings had in open court:)

THE CLERK: Case 16 CV 8940, Baker v. City of Chicago, et al., here for status.

THE COURT: Counsel, we have -- it's a small courtroom, and there are so many of you. We do have a court reporter here. And there's microphones, so you don't necessarily all have to step up. Why don't we have -- you're welcome to use any microphone anywhere, but I don't think I need everybody to step up here. You wouldn't actually fit. So feel free to just be seated. You can even go in the jury box if you want.

Go ahead.

THE CLERK: Okay. Can I have counsel for plaintiff Baker please state your name.

MR. RAUSCHER: Scott Rauscher and Sean Starr for plaintiffs in the Baker case.

THE CLERK: Okay. And do we have counsel for the other plaintiffs?

MR. FLAXMAN: Joel Flaxman for the plaintiffs not represented by the Loevy firm.

THE COURT: All right. That's a good way of putting it. We're not going to call all 23-and-growing cases. But we recognize in many of the cases, the Loevy firm and the Flaxman firm are together representing the plaintiff; in some, only the Flaxman firm.

MR. FLAXMAN: Yeah, there's one firm -- excuse me. There's one case where both firms represent the plaintiff.

THE COURT: One, right.

MR. FLAXMAN: The remainder are -- there's just one firm as -- for the plaintiff.

THE COURT: Okay. Go ahead.

THE CLERK: Thank you.

Counsel for defendant City of Chicago and individual Chicago Police Officers represented by Reiter Burns, please state your names.

MR. NOLAND: Dan Noland and Paul Michalik.

THE CLERK: Thank you.

Counsel for defendant Watts.

MR. GAINER: Brian Gainer and Ahmed Kosoko.

THE CLERK: Thank you.

Counsel for defendant Mohammed.

MR. PALLES: Eric Palles and Gary Ravitz.

THE CLERK: Counsel for current and former defendant officers represented by the Hale Law firm.

MR. BAZAREK: William Bazarek, and I'm also here with Brian Stefanich and Anthony Zecchin.

THE CLERK: Okay. Counsel for the Spaargaren and Cadman defendant cases.

MR. ZIBOLSKI: Kevin Zibolski.

THE CLERK: Anybody else?

Thank you.

THE COURT: Good. We didn't miss anybody.

All right. Why don't you have a seat. And then if we get to a point where I -- you're going to have to -- I have questions or you want to argue an issue, whoever is going to argue can just step up to the podium.

I did review the joint status report filed on November 30th, docket 189. Thank you. It was very helpful. Much of what you've put in that joint status report is by agreement. So let's go through some of that. And then there are some disputes that we have to address.

So the parties have proposed 18 months for fact discovery in the currently pending cases, which makes the deadline June 9, 2020. So I'm going to adopt that fact discovery deadline.

The parties have agreed that written discovery and depositions may begin immediately in all cases where that discovery hasn't begun and may continue in cases where that discovery has already started. And that's, of course, fine.

The parties have agreed that the presumptive limits for discovery in Federal Rule of Civil Procedure 30 will not apply in these coordinated proceedings. So they won't.

The parties have proposed -- and I will defer setting any expert discovery schedule. The parties propose that I do that near the end of fact discovery. What I'm likely to do is

a few months before the fact discovery deadline, if the parties haven't asked me to address it sooner, I'll be asking you to identify types and number of experts you anticipate and to propose a schedule so we know what's going to happen when fact discovery ends.

As far as -- the parties have proposed that also near the end of the fact discovery deadline, which is now June 9, 2020, that I set deadlines for fact discovery for future cases. I don't think that's really going to work. I mean, I just set the June 9, 2020 date. Maybe a case will be filed next month, and I'm not going to wait until 2020 to set that deadline. So I'm just going to defer on that issue. We'll see what makes sense as cases come in. And the parties can be free to -- you know, you'll see what additional discovery is needed and we can talk about deadlines.

In terms of the written discovery plan, the parties have agreed, and I'm going to order, that responses to interrogatories served in one case may be used in other cases that are also part of the coordinated proceedings. And also, to avoid unnecessary duplication of work, the coordinated cases are not part of the mandatory initial discovery program.

I do see the parties have a disagreement about what initial disclosures should be made when new cases are filed.

The defendants are suggesting that the usual Rule 26(a)(1) disclosures be done, and the plaintiff would

disclose 30 days after a complaint is filed and defendants would file theirs 30 days after the plaintiffs.

The plaintiffs propose that they make their disclosures the same day as defendants, the parties would make their disclosures on the same day, 45 days after a complaint is filed; but also their disclosures would not be what's required under Rule 26(a)(1) but would be similar to what's required under the mandatory initial discovery program. And so what that means is that instead of disclosing persons likely to have discoverable information that the disclosing party may use to support its claims or defenses and providing the subjects of that information, as Rule 26 requires, under the plaintiffs' proposal, the parties would identify persons likely to have discoverable information relevant to any party's claims or defenses and then provide a fair description of the nature of the information each such person is believed to possess.

And also the plaintiffs' proposal would require the parties to give names and addresses of all persons you believe have given written or recorded statements relevant to any party's claims and defenses and provide a copy of the statement that would be attached, absent a claim of privilege. Again, if the statement were not in the party's possession, custody, control, the party would still state the name, address, and phone of each person believed to have a copy,

assuming that information is known to the party.

And, finally, in the plaintiffs' proposed initial disclosures, it would also include -- 45 days after filing the complaint -- would include the production of documents and ESI that a party believes may be relevant to any party's claims or defenses if the party knows the materials exist but regardless of whether the party has possession, custody, or control of those materials.

So I've thought about this. You know, if the parties were in agreement, then I'd have no problem experimenting if it makes sense to me. But you're not in agreement on this proposal. And, you know, the MIDP is a pilot program. We have no idea -- I certainly have no idea whether the court is ultimately going to decide that it's more efficient or less efficient to use those procedures. Maybe it will be a mixed bag and they'll adopt some of them and others will be rejected. But it is an experiment.

And so in this case, where we've got, what, 23 cases and growing? It's going to be 50 cases. I don't think it's going to make my life easier or yours for me to experiment in this case by adopting the -- some aspects of the MIDP. And so I'm not going to -- I think I'm going to keep it with the Rule 26(a)(1) disclosures. If you get to a point, as you've been doing this with new cases being filed, where you want to simplify that and you have a proposal, and especially if

you're in agreement, by all means bring it to my attention and we can consider that. But I'm not going to experiment and require the MIDP disclosures to be done in this case.

All right. So let's turn to the depositions. The parties agree that to the extent practicable, the depositions will be --

MR. FLAXMAN: Your Honor --

THE COURT: Yes.

MR. FLAXMAN: There was a disagreement about --

THE COURT REPORTER: I'm sorry --

MR. FLAXMAN: I'm sorry. Joel Flaxman.

THE COURT REPORTER: Could you use the microphone, please.

MR. FLAXMAN: Oh. Is it okay if I move this?

THE COURT: Yes.

MR. FLAXMAN: The other disagreement was about -- just about the dates for those disclosures.

THE COURT: Oh, good point. So the -- is your proposal simultaneous, Mr. Flaxman; that they be done on the same day but 45 days after a complaint is filed?

MR. FLAXMAN: That was our proposal, yes.

THE COURT: All right. And defendants' proposal is 30 versus 30. Why, again, would I want to deviate from the normal practice unless I have an agreement to do it. Does anybody on the defense want to respond to that? Otherwise I'm

going to adopt the normal 26(a)(1) process, except that it will be triggered by the filing of the complaint.

MR. NOLAND: That's fine, Judge --

THE COURT: Okay.

MR. NOLAND: -- on behalf of our clients.

THE COURT: All right. So turning to the depositions --

MR. NOLAND: The one thing I would add to that is that there would be new defendants that are added, and so those particular defendants probably shouldn't be tied to the complaint filing date because there will be issues with respect to tracking that particular individual down.

THE COURT: So why don't I say this: If it's a brand new defendant who has never been named in a complaint, the parties will confer and see if you can come to an agreement on scheduling, unless you want to pretend it's like a brand new case and, you know, agree on some deadline. And I'll hear from you if you have a dispute.

On depositions, they shall be cross-noticed for multiple cases. And there's a presumption that each plaintiff, defendant, and third party will be deposed only once for all cases that are pending when the deposition is taken. So that will be required. And, of course, the parties are going to work cooperatively to set reasonable time limits in advance of the depositions. And they recognize that seven

hours may not be a sufficient amount of time to depose certain parties and potentially certain third parties.

I'm not going to do it now, but as you move ahead, if you think it makes sense, you might want to propose some kind of deadlines for making proposals about that issue of reasonable time limits so we avoid last-minute disputes that interfere with your planning and you don't have to run into court at the last minute trying to get me to resolve your disputes. So, hopefully, it won't be an issue; but if so, feel free to propose deadlines for making known what your views are on time limits or time parameters.

For the depositions of defendant officers, the defendants are proposing some procedures that plaintiffs oppose, at least some of them. On the first one -- and I don't know if plaintiffs oppose it, so let me just go through that one. Defendant officers -- or I should say defendants are proposing that seven business days before a defendant officer's deposition, if it's scheduled for more than one day, in that event, the plaintiff will disclose to defense counsel the lawsuits for which the defendant officer will be examined on for each particular deposition date.

Are plaintiffs opposed to that?

MR. RAUSCHER: We're opposed to adopting that as a formal requirement, in large part because we don't think it's a practical way to go about taking the depositions. And I

think it is likely to lead to more disputes about whether a particular question relates to a case that we've notified -- a specific case we've notified them about before the deposition or relates to 404(b) evidence or relates to Monell evidence.

What we've -- what I've -- we've talked about at least informally before the status conference today is we can say, here are the cases we expect to concentrate on on this particular day. And I think that's a reasonable way to do it without tying either party to the specific types of questions you can ask at a deposition which you wouldn't normally have to do in advance of a deposition.

THE COURT: So a witness might give an answer in one of the cases you're concentrating on, and you know that there is another case and it was not set for that day but it has some issue that ties into what he's now testifying about, and you want to be free to jump in and ask a question for that reason, even though it's not the primary day that you're going to be questioning about this other case, for example?

MR. RAUSCHER: I think that's a very good example of a potential dispute that could be raised if we adopt this as a formal procedure.

THE COURT: You know, that would seem to make sense to me. It's not a memory test, so I am concerned that if somebody you're -- if somebody is going to be deposed, that they have some ability to prepare and read the arrest reports

and other materials. And maybe if you get to a point where you're deviating too much and you're getting into another case, that the parties can take a recess, let the officer actually sit down and read the arrest reports. But it is, it seems to me, hard that the defendants would be able to step up and object and not answer a question just because it's called on the wrong day.

Is there anything that the defendants want to say on that point?

MR. BAZAREK: Yes, your Honor. Just --

THE COURT: What plaintiffs are proposing seems to make sense --

MR. BAZAREK: Your Honor --

THE COURT: -- in theory.

MR. BAZAREK: -- just for background.

THE COURT REPORTER: Counsel, your name, please.

MR. BAZAREK: Sure. William Bazarek from Hale Law.

So, Judge, just hypothetical officer. Let's say plaintiffs let us know they're going to take depositions concerning all the lawsuits where the department member is being sued over three days. And so all we are asking for is that you let us know on day one, he's going -- this -- he or she is going to be questioned about this particular case. So it's not preventing the plaintiff from asking questions about, you know, another day or another incident that would be for,

say, day two or day three.

But it's more than just potential plaintiffs because we already know we're expecting another 25 cases shortly. There's also individuals whose cases may be investigated right now, and The Exoneration Project knows who those individuals are, and plaintiffs likely know who -- or plaintiffs' counsel likely know who those individuals are, that we wouldn't want to be in another position of having to -- an officer be examined and questioned about a case where there's been no discovery, doesn't know, you know, about the case, hasn't prepared for that case or to testify, to start going into questions like that. And so I think that's what the problem is.

And I'm not saying this is, you know, like an ambush-type thing. But this is really such a unique case where you have an officer sitting for, right now, say, hypothetical, 15 separate incidents, lawsuits that he's going to be examined on. So I think it's -- it's a fair way to go about -- and I would say also an efficient way -- to go about depositions.

THE COURT: I mean, in theory what plaintiffs' counsel is saying makes sense; and you're saying, I am going to do it that way. But I can't envision -- and maybe some situation is going to come up where it's really going to be inefficient or I need to tie into some other case. It may or

may not happen. I mean, if you think about it, you have so many other other-acts cases already just with the number of ones that are -- have been brought.

I think what we do here is if you get to a point where you actually -- plaintiffs' counsel asks -- you think there's a question you have to ask, you're not trying to turn to a case that hasn't been identified for the day, but you have some limited question and it ties directly to what's happening, that you go ahead and ask it. And if, you know, it's -- defendants, you know, you can decide you're going to let him answer or not. If you think it's going too far and it's now questioning about another case, not one on the list, you know, you can stop it and -- but I don't want to set a rule that under no circumstances can plaintiffs' counsel ever ask any question that, you know, you might argue relates to some other case because I just -- I can't anticipate every situation that might come up.

So I think if that situation comes up, make your, you know, case, ask the question, and hopefully you can work it out. If not, you know, you might end up having to ask that question on another day, depending on how I rule. But given the number of cases, I -- you know, I don't see how you can not give some advance notice of which cases you're going to cover on which days.

On the question of cases that -- I mean, it's

possible some cases are never going to become the subject of a lawsuit. And so how do plaintiffs ask questions about those? I mean, if I assume every single case will be a lawsuit, then we know at some point the defendants will be -- officers will be questioned about that case. If there's no lawsuit, then how do plaintiffs get to depose about a case like that, under the defendants' proposals?

MR. RAUSCHER: Is that a question for the defendants?

THE COURT: Yes, I guess it is for the defendants.

MR. BAZAREK: Your Honor, I would imagine from just press accounts that I've read and even the statements in court, that there could be -- let's just say, hypothetical, we know there's going to be another 25 lawsuits filed within the next month and a half. And Exoneration Project -- plaintiffs know that there's X number of individuals -- they know them by name -- who the state's attorney right now is investigating those cases. So that -- those are known.

Our point is those that are known, that are under investigation by the State's Attorney's Office, that the plaintiffs should not be allowed, in lawsuits that are presently filed, to ask questions about those particular cases because really what you have then, it's discovery being conducted on a lawsuit that hasn't been filed. Our clients -- my clients have not been able to prepare, defend, don't know what the allegations are. So it's -- that's the point I'm

making there, Judge.

MR. FLAXMAN: Your Honor, if I could give a more concrete example. And I certainly, to a certain extent, agree that it would be improper for the plaintiffs in one case to be attempting to get discovery about a case that hasn't been filed, to a certain extent.

The issue -- and I can give you a -- I mean, there's one issue that we haven't talked about; that there are certain arrests where there's never going to be a case; that there are a handful of people who were arrested and went to trial and were found not guilty. We think the allegations that those people were framed and then found not guilty at a trial are going to be relevant in this case and --

THE COURT: Because you won't have enough other-acts evidence without that?

MR. FLAXMAN: Well, I think some of those may be the strongest ones because they went to trial and because a jury or a judge agreed, yes, you should not be found guilty. And so the language here says we're not allowed to ask any questions about those. I don't think that's fair.

In terms of the issue of cases that are in the state's attorney's hopper, so to speak, I can give you a concrete example. Angelo Shenault, Jr., on one of his arrests, the same day two other people were arrested. I know that the state's attorney is reviewing one of those arrests.

And if I'm taking a deposition about Mr. Shenault being arrested, I'm going to ask -- I need to ask about the other person who was arrested that day. I don't want to spring that on the defendants. I want them to be prepared and to be able to answer those questions. But to say I'm not allowed to ask about this other person arrested, it just ties our hands in an unfair way.

And I think, like the MIDP stuff we were talking about, you know, it sets an experimental rule that there's no basis for, when we don't know how it's going to work.

THE COURT: So you've raised two specific situations. So one is, if there's -- we know there will never be a lawsuit because the person was not convicted, it seems to me, you know, you should be allowed to ask questions. You just have to identify which day you're going to cover those so that the defendant officers can be prepared; and then, you know, you ask those questions on that day.

Defendant -- do defendants want to say anything more on that?

MR. BAZAREK: No.

THE COURT: Okay. And then --

MR. PALLES: Excuse me. I do, your Honor. Eric Palles for Kallatt Mohammed.

It seems to me that it will be perfectly fair to impose a limitation on 404(b) witnesses, limited to plaintiffs

or putative plaintiffs. I don't see why, for example, if somebody is not going to file a lawsuit or if somebody filed a citizen complaint 15 years ago -- I mean, every one of these cases is alleged to be similar to the others. So a universe of 50 to 75 other acts would seem to me to be a reasonable limitation, given the other 404 -- excuse me -- the other 403 considerations.

THE COURT: I mean, I think you can talk about that. I can't imagine plaintiffs, with the number of cases you're going to have of actual filed lawsuits -- and we're talking, you know, the parties have estimated 200 to 300 depositions -- that you're going to want to go off and start doing depositions in cases where people were not convicted just because you can. I think you're going to pick your best cases and hopefully limit it to that.

So I will direct the parties to discuss limits. And when you get to a point where you need an answer from me on it, I will rule on that. But I'll look at more argument and see what the context is.

MR. PALLES: One other question, your Honor, just for clarifying. It seems to me that the gist of where we're going with these depositions is that you're indicating that, generally speaking, the plaintiffs ought to provide notice of the cases they're going to be deposing our defendants on.

THE COURT: They will provide notice, yes.

MR. PALLES: Okay. All right. And is there -- you know, we'll deal with the exceptions --

THE COURT: Right.

MR. PALLES: -- as they arise.

THE COURT: So the second situation Mr. Flaxman raised was what if we have multiple -- now, I can't call them plaintiffs because one will have sued but others have not, but there were multiple people arrested in the same occurrence by the defendant officers on a particular day; one has now filed a lawsuit, the others have not filed yet because maybe their convictions are still under review.

And if plaintiffs want to move ahead now with the plaintiff who has filed a lawsuit and want to ask questions about the others who have not sued yet but is providing notice and they relate, that seems to me to be efficient. Defendants would have notice of it. It's one universe of arrest reports.

If you get to that point, you're scheduling that, and you think -- defendant officers think that's not the situation and it would be unfair or it can't be done that way, you know, I'll hear from you. But barring that, again, my point is to -- you know, defendant officers should have some notice. It should be done efficiently, and it might be more efficient there to let the defendant officer answer questions even on some arrests that have not yet resulted in lawsuits if they're tied to an arrest that has already resulted in a lawsuit.

MR. BAZAREK: Judge, one thing on that then. If that was the case -- and I appreciate the example of that -- where if, in fact, there's other co-arrestees, maybe their matter is being investigated right now and the officers then, you know, make themselves available to answer questions for that particular day, wouldn't that suffice then for -- that will be the deposition for, you know, that particular case as well if a lawsuit is subsequently filed? I mean --

THE COURT: I think that's fair. I mean, there may be some reason plaintiffs' counsel would say, I could not have known or anticipated, I -- there's some new information I didn't have; but if you want to move ahead now and depose and everybody is ready and you're asking the questions, you know, in theory, it makes sense to -- you don't get another shot on that case.

MR. FLAXMAN: In theory it does make sense. And it's -- as a matter of expense, I think it's what everyone would want to do.

THE COURT: Right.

MR. FLAXMAN: I think in a lot of things that we are discussing today, we should have some recognition that, you know, this person may come into the case with a different lawyer. And that's -- you know, there's an issue with binding plaintiffs and defendants who are not involved who are not here today, and there's a -- the same kind of issue if that

person has different representation.

THE COURT: Well, that lawyer would make a case to me.

MR. FLAXMAN: Right.

THE COURT: And obviously there's a deposition transcript, and I would hear --

MR. FLAXMAN: Sure.

THE COURT: So, again, barring some circumstances that will be brought to my attention that I couldn't consider today or didn't consider, we'll proceed as I've indicated.

MR. MICHALIK: Judge, Paul Michalik.

I think paragraph 13 of the joint status report probably covers that latter issue.

THE COURT: So paragraph 13 indicates: Future plaintiffs who file cases after any particular defendant is deposed will be permitted to re-depose that defendant on topics that are not duplicative of the earlier depositions. The parties will work cooperatively to ensure that these depositions occur in efficient intervals so they can cover multiple plaintiffs' cases in one deposition setting.

Yes, although it's a little bit different because in paragraph 13, potentially no case -- no questions have been asked about that particular arrest. And in the case of Mr. Flaxman's example, they spend a lot of time talking about the exact arrest. So it might be a little harder to show, you

know, not just that we didn't cover on that topic, but counsel would have to show, you know, something -- some reason that they have to actually get back into that arrest.

The -- did counsel confer and designate this agreed 70 deposition dates through July 2019?

MR. RAUSCHER: We did confer. And essentially other than from June 21st to July 5th, a couple other dates in the middle there, we have set all of the dates from -- starting mid-February are free. And we're going to block out Tuesdays and Thursdays from mid-February through July, other than those couple of weeks. And then we'll work on slotting in -- trying to do sort of equal days plaintiffs and defendants.

THE COURT: All right.

MR. RAUSCHER: And that's not saying Tuesdays and Thursdays -- we're not limiting it to only Tuesdays and Thursdays, but that's where we're starting at least.

THE COURT: Okay. So those dates everybody will be -- have open, but you might have other dates that you might also schedule depositions.

Is there anything more anybody wants to say on that issue?

Okay. As agreed, the parties can use all depositions taken in the coordinated proceedings, including parties in cases that are filed after a given deposition date.

Also as agreed -- maybe we actually talked about the

next one. Future plaintiffs can't duplicate questions asked at prior depositions.

So I think that we now turn to documents. And this is paragraph 17 in your joint status report.

So the parties have described what's been produced to date and have agreed: Any documents produced in pending cases may be used by any party in the coordinated cases, subject to and without waiving any objections to the admissibility of any such documents. So that will be adopted.

As far as ESI, the parties expect that the coordinated cases may involve the production of ESI. And they will meet and confer to address the parameters of such documents, including the potential use of search terms.

So has that not happened in any of the five cases yet?

MR. NOLAND: There was some discussion in the Baker case and there have been some e-mails, not a lot, produced. And so there was some discussions. And I think this kind of addresses that. And there will need to be probably an additional discussion with all the parties.

THE COURT: Okay.

And then the parties have agreed going forward documents will be marked and produced to indicate that they're being produced as part of the coordinated discovery proceeding. And those will be made available to all parties.

And also before producing any additional documents, plaintiffs will decide on a new prefix for a Bates stamp. And that will indicate the documents are being produced as part of the coordinated proceedings. And all documents that plaintiffs produce going forward will have that prefix.

Also, documents produced by the defendants shall indicate which defendant is producing the documents. And the parties will use consecutive Bates numbering for production across the coordinated cases, rather than starting with a new Bates range in each separate case. That's fine.

On the protective orders, same protective order in Baker will apply in every other case.

As far as HIPAA orders, plaintiffs don't believe a HIPAA order will be appropriate in every case. Defendants think it will be. I'm going to wait. When you get to a point where you have a disagreement, you know, I'll just rule on that. I don't think there should be any disagreement on the language. If there is, I'll rule on that the first time it comes up.

MR. NOLAND: Your Honor, may I ask a question?

THE COURT: Yes.

MR. NOLAND: Again, Dan Noland.

Paragraph 21, as far as the protective orders, do we need to take any further action on that? Do we need to put a caption on the orders and submit them to your proposed order

e-mail system? Or is there some other way that your Honor would like to handle it?

THE COURT: You know, I think it would be best to take the current one, list every case, every party, and then get everybody to have signed off on it because we have lawyers who -- parties who aren't even in the Baker case. So that would be my suggestion, unless somebody has a better idea.

MR. RAUSCHER: Judge, that sounds fine.

THE COURT: I mean, obviously then we have future cases. If somebody new comes in, a new firm, a new party, then they would need -- we would need to do something additional. But, otherwise, maybe the agreement could be worded so we don't have to do that just for every new case if there are no new lawyers or parties other than the plaintiff.

MR. RAUSCHER: That proposal sounds -- this is Scott Rauscher again.

That proposal sounds fine to us. One thing we had discussed before the status conference was the possibility of having maybe a new lead case caption, sort of like in an MDL proceeding, at least for the discovery and joint things like this for pretrial. That's, I guess, largely a Court issue, not our issue. But if there's anything we can do to help with that, if the Court thinks it makes sense, we thought that might be an efficient way to handle things.

THE COURT: Anybody have any other suggestions along

those lines? Have you seen that done in anything besides an MDL? I mean --

MR. RAUSCHER: The closest in -- if -- you know, like putative class actions that get consolidated --

THE COURT: Right.

MR. RAUSCHER: -- for pretrial proceedings and they sort of -- they say like "related to" on it, on the caption.

THE COURT: I guess then if they did that, it would be basically a new docket, right? So everything would then be filed in that, rather than, right now, we have a number of things filed in the Baker case. I'll talk to Judge Wood and we'll talk to the Clerk of Court and see if that could be done and let you know.

So I guess the only question I would have -- so if we have a new plaintiff, say, who has not signed on to the protective order, counsel has signed on, and I guess if we have the same counsel for that plaintiff as prior plaintiffs, then the only question would be whether your client is, you know, advised and knows and is bound by that order. And so we just need language somehow so that it's crystal clear that these new plaintiffs are bound by the protective order.

So I think I'll let the parties try and propose a language and the form of that. And if you have disputes, you can let me know what it is. But hopefully you'll have an agreement of what you think accomplishes what you need for

your clients' protection, whether it's, on plaintiffs' side, maybe medical records, or defense side, you know, whatever information you have that is going to be under the protective order.

MR. RAUSCHER: Judge, should we submit that to your proposed order --

THE COURT: You know, I think I'll just have you file it. It's got to be in the court record anyway. So whether it's an agreed order or red lined or two different versions, however you want to do that, but let's say you'll file it.

Do you want me to set a deadline for doing that? And, if so, do you want to propose one?

MR. RAUSCHER: I would say two weeks just to make sure we have time to confer with all the parties.

THE COURT: All right.

THE CLERK: Two weeks is December 20th.

THE COURT: All right. But the parties have agreed until such time as a protective order is entered in -- whether we call it the new captioned case or -- but the Baker order applies in every case until a protective order is entered in the other cases.

And you've also agreed the parties will maintain the confidentiality of documents subject to provisions of HIPAA until a HIPAA order is entered in the case or cases for which the HIPAA-protected information is relevant.

The parties have agreed, so I will adopt your proposal, that any future parties in the coordinated proceeding may be provided with all documents produced, so long as they agree to abide by the terms of the Baker protective order or whatever protective order is in place.

The parties have agreed to entry of a Rule 502 order for inadvertent production of privileged documents. Can I just set the same date for you to submit that, December 20th?

All right. And then you're working on the privacy order, so I don't think there's anything for me to do with regard to that at this juncture. When you have it, you'll submit it and I'll enter it.

MR. NOLAND: And I think the only thing to say there, on paragraph 24, I don't -- the Privacy Act order is a little bit different and we have to have the government's agreement and involvement. So I'm not sure that we can share the documents produced by the government pursuant to that Privacy Act order to parties that otherwise haven't received them, unless there's a case that they're in in which they have them.

THE COURT: All right. Well, the government -- U.S. is not party to this agreement. So if they have their own limitations on what you can do, that will be spelled out in a Privacy Act document or order once you have it.

All right. In terms of the -- the next section is just describing completed and anticipated written discovery.

Have all the third parties been served in the cases, you know, let's say, Baker, the earlier cases? Are there still some third parties who are going to be subpoenaed and haven't been? For documents I'm talking about.

MR. FLAXMAN: I don't think they're -- I expect we'll see more to the state's attorney in a lot of the cases that are already filed.

MR. NOLAND: Yeah, I think there's going to be a variety of additional third-party subpoenas that are issued, especially with all the new cases that are filed, that are going to have to go out. And, you know, we had -- I think there's substantial additional record subpoenas that are going to go out.

THE COURT: So I guess I'll put it differently. For entities that have already received subpoenas, they're going to get more subpoenas because there are new cases. But are there any third parties who have never gotten a subpoena for documents that you anticipate will be getting subpoenas?

I mean, you've got a list of many entities. And I guess I'm assuming they all have been subpoenaed for some case or other already. Nothing comes to --

MR. NOLAND: I think that's right. There could be plaintiffs -- from our side, plaintiffs could have particular unique issues to them about --

THE COURT: Right.

MR. NOLAND: -- some type of employer or something like that in which there could be -- additional subpoenas could go out.

THE COURT: Okay.

All right. And then, so I would like the parties to take your agreements and things I've ordered and put it into a case management order that I will enter. And, again, I'll set the same date for that, December 20th.

The only other thing is, I think it's -- it would make sense in this case, given the number of parties, that at each status, I'm going to set a future status date. I'll have a joint status report be filed in advance. And in that joint status report, if you're in agreement that we don't need to have the status hearing that I've scheduled, you can say that in the joint status report, propose a new date that you all think makes sense; and that way when I get your joint status report, you know, if it's just everything is going fine and you don't need to appear, I'll save you all a trip to court. But if we do need it, everybody has got it on their calendar so we don't have to worry about trying to find a date that works for everyone.

I mean, right now you have that date with Judge Wood, so I had adopted the same date. That was, what, January 7th, I think.

THE CLERK: January 4th.

THE COURT: January 4th. I mean, I normally wouldn't set a date that soon. I guess I'll keep that date as long as she has it. If she cancels that date and you're all in agreement that it is pointless to come in on January 4th, then I'll be happy to reset that. I'll just ask that you confer with each other and come to an agreement on a proposed new date. Assuming that January 4th date goes forward, you know, I would set another one -- I'll roughly do them every two months probably, unless you have a proposal and you think it should be more frequent or less frequent.

MR. PALLES: Your Honor, Eric Palles for Kallatt Mohammed. May I be excused? Mr. Ravitz will be here for --

THE COURT: Yes, you may.

MR. PALLES: Thank you, your Honor.

THE COURT: So let me do this: I'm going to set a new status date in roughly 60 days with a date for a joint status report. And what I'll do -- I think if Judge Wood ends up keeping her status, maybe I'll just walk over there and I'll be there and, you know, it will be -- if she keeps hers, it will be quick at least.

Go ahead, Mr. Noland.

MR. NOLAND: Potentially relevant to that, the defendants' responsive pleadings are due tomorrow in the newly filed 15 cases. And we've spoken with plaintiffs' counsel and requested an extension. The defendants are working on a joint

motion to dismiss -- I guess motions.

And so one question we had for your Honor is whether or not -- if there's any -- if you have any ideas how we would go about getting an extension in each one of those? If we could submit a -- and we do have a call into Judge Wood's clerk with respect to that.

And then, secondly, perhaps that would be relevant to whether or not Judge Wood is going to keep that --

THE COURT: Okay.

MR. NOLAND: -- January 4th date because I think the date we agreed upon was January 7th that we would be filing the defendants' motions to dismiss by then.

THE COURT: So you're still conferring or do you have an agreement now?

MR. NOLAND: We have an agreement of January 7th for the responsive pleading date for all the defendants in the 15 newly filed cases. The defendants in the previously filed cases, I believe, already have responsive pleadings on file.

THE COURT: Okay. And so given that, is it your view, all of you, that it might make sense to reset that January 4th date to maybe a date in early February? That will be up to Judge Wood, but if you're in agreement, I can convey that.

MR. NOLAND: Yes, from our side.

MR. RAUSCHER: That's fine for plaintiffs as well.

THE COURT: Okay. So why don't we look at our calendars for a date in roughly 60 days from now and you can check your calendars.

THE CLERK: 60 days is February 4th.

(Brief pause.)

THE COURT: How does February 6th look, only because I have another case that's going to take a while at 11:00 and I like to do these later so I can get a court reporter. How does 10:45 on Wednesday, February 6th look?

Anybody want to argue for a different date?

Okay. All right. So that's going to be a status before me. I think with Judge Wood, I'll give her a heads up about this, but I can't reset her date for responsive pleadings so just file an agreed motion, but I'll let her know it's on its way.

MR. MICHALIK: Paul Michalik again.

And that's one of the issues that we have. We would like to be able to do this as efficiently as possible. We're talking about 15 different cases. So I guess our question is, do we need to file a motion in each of the 15 cases or can we somehow just submit perhaps agreed orders in the 15 and sort of avoid all of the unnecessary paperwork?

THE COURT: I think that makes sense. You know, we just want to make sure there's a record of what happened. Nobody objects to that proposal, do they?

MR. RAUSCHER: No.

THE COURT: Okay. So I'm going to say that I gave you permission to do it that way.

MR. MICHALIK: Thank you, Judge.

THE COURT: All right. Anything further that anybody wanted to raise?

MR. NOLAND: I think the last thing was going back to the 26(a)(1)s and the due date of that. And I think the discussion was 45 days after filing of the complaint. Of course, the 15 new cases were filed more than 45 days ago, and the parties have not exchanged -- but there's actually maybe a couple of them have -- but for the most part, Rule 26(a)(1) disclosures. So I don't know if we need to set a date for those today or if it would be 45 days from today that we would be doing that. That would be fine with us, if that's acceptable to the Court and plaintiffs.

MR. FLAXMAN: 45 from today is fine.

MR. RAUSCHER: Yes.

THE COURT: So Rule 26(a)(1) disclosures in any case where they haven't been served are due in 45 days. And going forward, 45 days from filing of the complaint.

MR. NOLAND: Thank you.

THE COURT: All right. Good. Thanks, everyone. Anything else?

Okay.

(Which were all the proceedings heard.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Nancy C. LaBella *December 13, 2018*
Official Court Reporter